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Re: CC Docket No. 98-168

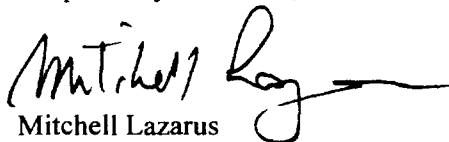
Dear Ms. Salas:

Enclosed are the original and six copies of the Comments on Direct Case of the Internet Service Providers' Consortium for filing in the above-referenced docket.

Kindly date-stamp and return the extra copy of this cover letter.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus

Counsel for Internet Service Providers' Consortium

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OCT 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Bell Atlantic Telephone Companies
Tariff FCC No. 1
Transmittal No. 1076

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CC Docket No. 98-168

COMMENTS ON DIRECT CASE

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SUMMARY

Most DSL subscribers will use the service to access the Internet, and most will connect through an Internet Service Provider (ISP). The Internet Service Providers' Consortium (ISP/C) is the voice of independent ISPs — companies whose primary business is providing Internet services to their local communities. Independent ISPs do not include divisions of telephone companies like Bell Atlantic, on-line content providers like AOL and CompuServe, or software companies like Microsoft.

Much of the debate on interstate-intrastate jurisdiction over DSL misses the most important point: namely, DSL does just what the conventional local loop does, only better and faster. Both DSL and the conventional analog loop send voice and data to the central office, where they are routed on to the ultimate destination. Although DSL sends data faster, and at the same time as voice, these are differences of degree, not of kind. A technology-neutral policy calls for the Commission to regulate both DSL and POTS local loops in the same way, as any other course would give undue weight to technical distinctions that should be irrelevant. The quantitative improvements that come with DSL are no basis for a qualitative shift in regulatory philosophy.

DSL is a basic service, and so is fully subject to Computer III requirements, whether tariffed at the federal or state level. Bell Atlantic must unbundle DSL and make it available to competing ISPs at nondiscriminatory rates, terms, and conditions. The Commission's proposal that would allow Bell Atlantic to offer DSL through a structurally separate affiliate should help to protect CLECs from anticompetitive behavior, but will do nothing to protect the "pure ISPs" — those that are not also CLECs. Thus, the Computer III regime is still needed under the

Commission's separation proposal, and Computer III obligations must apply to Bell Atlantic's DSL affiliate just as they do to the parent company.

Finally, even a finding of interstate jurisdiction in this proceeding cannot subject ISPs to access charges. None of the Commission's several grounds for exempting ISPs from access charges — non-cost-based rates, inefficient rate structures, inappropriate regulatory model, lack of similarity to IXC's, and threat to growth of information services — have anything to do with this proceeding. Indeed, it was partly the access charge exemption that fostered the growth of the Internet, which in turn is driving the demand for DSL today. It would be ironic indeed if the very success of the ISP access charge exemption became the direct cause of its withdrawal.

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Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
Bell Atlantic Telephone Companies)	CC Docket No. 98-168
Tariff FCC No. 1)	
Transmittal No. 1076)	

COMMENTS ON DIRECT CASE

The Internet Service Providers' Consortium (ISP/C) hereby submits these Comments on the Direct Case filed by Bell Atlantic on October 6, 1998, in the above-captioned proceeding.

I. INDEPENDENT ISPs ARE A VITAL PATHWAY BETWEEN DSL SUBSCRIBERS AND THE INTERNET.

The greatest demand for DSL services for the foreseeable future will come from people seeking faster access to the Internet. Today most subscribers reach the Internet through an Internet service provider (ISP), and most will continue to use ISPs for Internet access as DSL becomes available. ISPs are in the business of providing retail-level access to the Internet to anyone with a computer and a phone line (or other means of connection). Without the ISPs, only entities large enough to maintain their own networks could have Internet access. ISPs make the Internet universal and ubiquitous.

Independent ISPs are companies whose primary business is providing Internet services. The independents are ISPs *other than* divisions of telephone companies like Bell Atlantic, on-line content providers like AOL and CompuServe, or software companies like Microsoft. In addition to serving consumers, independent ISPs typically work with the small businesses of their

communities — companies and organizations that lack their own information services personnel and Internet expertise, and hence often demand considerable attention and resources from their ISPs. Many of these subscribers require assistance with individualized installations and employee training, and depend on web sites designed and maintained by the ISP for their presence on the Internet. Some ISPs specialize in serving particular industries (health care, for example), and are able to offer industry-specific subject-matter expertise along with conventional Internet services. Together, small-business subscribers and individuals average about 85% of an independent ISPs' customers.

The independent ISPs can offer their subscribers levels of time and energy that the large providers could never muster. Reaching out to their communities, independent ISPs create classes, software, and texts to assist the elderly, youth, and other populations who tend to be late or underfunded entrants to the Internet. Many independent ISPs have long translated their concern for community affairs into Internet access for local governments, schools, and libraries. Typically the independent ISPs also provide technical support and training, sometimes through reduced-charge or free accounts. Their work has often given these community institutions their first Internet outreach. In short, the independent ISPs focus closely on their local communities and respond to local needs. A Commission official has informally (but accurately) described the independent ISPs as “mom-and-pop shops who get grandmas online.”¹

¹ From one independent ISP:

"We're the homey company with a local office who gives free classes for all the retirees and we let them bring in their computers if they don't work and we'll fix them. They can call and ask us all kinds of stupid questions . . . They can come in and tell jokes and ask what kind of modem they should buy and they send us the neatest compliments and tell us how great we are. What great subscribers we have! The oldest is 92 and she golfs every day and uses the internet at night.

Independent ISPs are a small-business success story in their own right. From only a handful of ISPs in 1995, the industry has grown to between 5,000 and 7,500 independent ISPs in the United States today. About 85% are themselves small businesses, with average revenues of about \$375,000. Most have between one and ten employees, and are growing. Collectively, all independent ISPs account for 50 percent of the U.S. ISP market. They also create an increasing number of highly skilled technical positions in the United States and abroad.

The independent ISPs have led the expansion of the Internet into the fastest-growing communications medium in the history of civilization. Years before the telephone companies and other large providers showed any interest, it was the independent ISPs — some of them launched by the same people who helped to create the Internet — that risked their own assets to develop the growth market of the decade. They are still the only means of access to the Internet by a local call in most rural and small-market areas. Everywhere, the independent ISPs contribute more than their share of the vitality and diversity that enables millions of people to use the Internet daily to improve and enrich their lives.

About the Internet Service Providers' Consortium. The ISP/C is the largest trade association for small to mid-size ISPs and other members of the Internet services industry. (A

"We'll go to people's homes and set them up at no charge if they are handicapped. The biggies can't touch us. We also teach other 'Interest Seminars' like how to do genealogy on the internet or how to set up your financial portfolio. We also teach how to use search engines and how to upload & download as well as how to do web pages. Once they take that class they usually hire us to do the web pages.

[. . .]

"No big outfit wants to come here - there just isn't enough volume. We even sell our service as the cheaper option to paying long distance charges to AOL. They can dial in to us, lower their AOL bill to \$9.95 per month and our \$25 makes their \$X00 phone bills look like the national budget."

list of members is attached as Appendix A.²⁾ Founded in 1996, the ISP/C now includes over 230 company members, up 200 percent in the last year alone. ISP/C members provide local and backbone Internet access, online content, and hardware and software for the industry. Members of ISP/C have over 1 million subscribers in the aggregate, with headquarters in more than 42 U.S. states and 10 countries. Most members serve local or regional markets, and increasingly specialize in services for specific industries and personal attention for those who need it.³

The ISP/C welcomes members regardless of size and geographic location. It has emerged as the voice for independent ISPs.

II. THE COMMISSION SHOULD REGULATE DSL JUST AS IT REGULATES THE CONVENTIONAL LOCAL LOOP THAT DSL SERVICE WILL SUPPLANT.

Much of the record in this and related tariff proceedings comprises efforts to persuade the Commission that its precedents require either interstate or intrastate jurisdiction for DSL services. In arguments of near-Talmudic complexity, the ILECs, CLECs, and large ISPs dissect past Commission teachings on jurisdictional separation, mixed use special access, inseparability, interstate contamination, mix-and-match, and every other doctrine they can bring to bear. Their pleadings debate the significance of the technical distinctions between DSL and conventional loop technologies, and analyze in detail the effect of each technological variation on the various precedents. And in the end, starting from the same essential facts and the same body of law, the various sides reach plausible — but opposite — results.

² Not all members listed in Appendix A have individually reviewed and approved this pleading.

³ Additional information about the ISP/C is available at <http://www.ISPC.org>.

The ISP/C respectfully suggests that much of this debate misses the point. The parties pass over the one fact that should govern this proceeding: namely, DSL does what the conventional local loop does, and over the same copper plant — just better and faster. Today, a subscriber uses the analog local loop to send voice and data to the central office, where it is routed on to its ultimate destination. A DSL subscriber will also send voice and data to the central office, which will still route it on to the ultimate destination. To be sure, DSL carries data faster, and at the same time as voice. But these are merely differences of degree, not of kind. DSL performs the same functions as the conventional local loop without adding any new functionality of its own, other than speed. A subscriber needs a conventional local loop, or a DSL-equipped loop, but to have both would be duplicative.

Inasmuch as subscribers will use DSL for the same purposes as the conventional local loop, a technology-neutral policy calls for the Commission to regulate it in the same way. Any other course would give undue weight to technical distinctions that should be irrelevant. Of course, small regulatory departures may be necessary to accommodate the technical realities. But these fine points do not overshadow the fundamental issue that DSL is merely an enhancement that improves how the same copper does the same job it has always done. The quantitative improvements that come with DSL are no basis for a qualitative shift in regulatory philosophy.

III. THE COMMISSION MUST REQUIRE BELL ATLANTIC TO PROVIDE DSL TO COMPETING ISPs ON A NONDISCRIMINATORY BASIS.

1. Independent ISPs in Bell Atlantic Territory Both Compete With Bell Atlantic's Retail ISP Business and Depend on Bell Atlantic's Facilities.

Bell Atlantic is itself in the ISP business, and competes directly with independent ISPs for the same retail Internet customers. But, at the same time, the independent ISPs in Bell Atlantic territory depend on Bell Atlantic for the multiple local loops, and other facilities, that customers must use to reach the ISP, and for data lines that connect the ISPs to the Internet backbone. Bell Atlantic thus has every opportunity — and every incentive — to misuse its facilities monopoly to discriminate against independent ISPs in order to build up its own ISP business.

Absent restraints, a carrier's exercise of rational self-interest, coupled with its facilities monopoly, will inevitably lead it to discriminate in order to hinder competition. Indeed, the carrier's duty to its shareholders requires it to maximize profit — within regulatory constraints. The Commission has long recognized that anticompetitive behavior on the part of carriers must be restrained through appropriate regulation, at least until competition becomes strong enough to exert control through market forces. Without regulation in the interim, real competition will never have a chance to emerge.

2. DSL Is Fully Subject to Computer III Requirements.

DSL is a basic service under Computer III. The Commission has held that advanced services, defined to include DSL, are "telecommunications services" under the Act.⁴ It follows

⁴ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, CCB/CPD No. 98-15,

that the physical character of advanced services comes within the term "telecommunications," defined as:

the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.⁵

The Commission explained why "telecommunications" includes advanced services:

xDSL and packet switching are simply transmission technologies. To the extent that an advanced service does no more than transport information of the user's choosing between or among user-specified points, without change in the form or content of the information as sent and received, it is "telecommunications," as defined by the Act.⁶

This characterization of advanced services is indistinguishable in practice from the definition of "basic service" that governs Computer III:

a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information.⁷

Indeed, the Commission has held that Congress intended "telecommunications" in the 1996 Act to parallel "basic service" under Computer III.⁸ It follows that advanced services, including DSL, are "basic services" under Computer III.

RM 9244, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 at ¶ 35 (released Aug. 7, 1998) ("Section 706 Order & Notice"). "Advanced services" are defined as "wireline, broadband telecommunications services, such as services that rely on digital subscriber line technology (commonly referred to xDSL) and packet-switched technology." *Id.* at ¶ 3. "Telecommunications service" means "the offering of telecommunications for a fee directly to the public. . . regardless of the facilities used." 47 U.S.C. § 153(46).

⁵ 47 U.S.C. § 153(43).

⁶ Section 706 Order & Notice at ¶ 35.

⁷ Second Computer Inquiry, 77 F.C.C.2d 384, 420 (1980).

⁸ Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501, 11511 (1998).

Because DSL is a basic service, it is fully subject to Computer III requirements. The Commission agrees:

We note that the BOCs offering information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services.⁹

This "continuing obligation" means that Bell Atlantic must unbundle basic services, including DSL, and make them available to competing ISPs at nondiscriminatory rates, terms, and conditions.¹⁰ (Under the separate requirements of Section 251, the carrier must also unbundle and separately tariff ATM or other transport from its central office to subsequent destinations, and make it available to CLECs.) Compliance with these Computer III provisions will ensure that an ISP operated by Bell Atlantic will function without an unfair advantage stemming from its affiliation with the local monopoly facilities provider. The carrier will not be hindered in any way, except by having to compete with the independent ISPs on equal terms.

3. The Computer III Safeguards Must Apply To a Bell Atlantic DSL Affiliate As Well As To the Regulated Company.

The Commission has proposed to permit the ILECs, including Bell Atlantic, to avoid the strict terms of their Section 251 unbundling and resale obligations by providing advanced

⁹ Section 706 Order & Notice at ¶ 37. No party has challenged this conclusion of the present Memorandum Opinion and Order, which is no longer subject to requests for reconsideration.

¹⁰ Any interstate tariff for an advanced service must reflect this unbundling. Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 3084, 3089 at ¶ 43 (1990). The Commission likewise has authority to require appropriate ONA provisions in state tariffs. Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 1, 148 at ¶ 283 (1988).

services through a structurally separate affiliate.¹¹ As we read the Section 706 Order & Notice, the affiliate can operate in either of two ways. The affiliate could operate on a retail footing, in competition with the CLECs, and would have to stand in line with the CLECs for access to the ILEC's facilities. Alternatively, it appears, the affiliate can operate on a wholesale basis, providing advanced services to the parent ILEC and the CLECs on equal terms.

The separation provisions are intended primarily to promote a competitive market in advanced services by ensuring that the ILEC cannot misuse its facilities monopoly to squeeze out competing transport providers. But even if these provisions adequately protect the CLECs, they will do nothing to safeguard "pure" ISPs — ISPs that are not also CLECs. An ISP still must go either to the ILEC (or ILEC affiliate) or a CLEC, if there is one in the market offering the needed advanced service.¹² But the ILEC affiliate profits the same stockholders as its parent, and has exactly the same incentive and the same means to discriminate as the parent does. Therefore, a Bell Atlantic affiliate that offers advanced services must be subject to Computer III safeguards, just as the parent is. Analyzing the need for those safeguards is a little different with and without a CLEC in the market, but the result is the same either way.

Case 1 — Only Bell Atlantic (or its affiliate) offers advanced services. This will be the usual case in rural and other lightly populated areas, where CLEC service is rare and the ILEC or its affiliate will remain the sole provider into the foreseeable future. If the ILEC opts to comply

¹¹ Section 706 Order & Notice at ¶¶ 85-117.

¹² The Commission has proposed to offer pure ISPs the same "section 251-type unbundling" access rights as CLECs. Computer III Further Remand Proceedings, 13 FCC Rcd 6040, 6091 (1998). Even if the Commission adopts that proposal, however, many ISPs may opt as a business decision to take service through the ILEC or a CLEC. They should have the right to make that choice without thereby subjecting themselves to anticompetitive conduct.

with Section 251, then it will be the monopoly provider. If it sets up a retail affiliate instead, then the affiliate will be the monopoly provider. Either way, the independent ISPs must take service from a monopoly that is also affiliated with the ILEC's ISP business. The ILEC and the ILEC affiliate thus present exactly the same potential for anticompetitive behavior. Even with the structural separation proposed in the Section 706 Order & Notice, the Computer III safeguards still remain fully necessary to protect the market for information services.

Anticompetitive behavior in this situation can take at least two forms. First, the affiliate can keep its DSL rates high to the independent ISPs, thereby raising the independent ISPs' cost of doing business, and hence push up the rates that independent ISPs must charge their subscribers. This helps the Bell Atlantic ISP sign up more customers at the expense of the independent ISPs. Or, to remove all uncertainty, the affiliate could simply tell the public it cannot receive DSL services at all unless it takes ISP service from Bell Atlantic's ISP. Applying Computer III controls to the affiliate as well as the parent should prevent both types of abuse.

Case 2 — One or more CLECs offer advanced services in competition with Bell Atlantic. The existence of advanced service CLECs in the market means only a marginal improvement for independent ISPs, especially if there are just a few CLECs. The separation mechanism proposed in the Section 706 Order & Notice should help to keep down the rate the CLEC pays, but that does not stop the CLEC from overcharging the ISP. To the contrary, a CLEC that itself offers ISP service, as many do, is better off maintaining high rates to competing ISPs for DSL and other advanced services, while providing equivalent services to its own ISP services at cost. The CLEC's means and motive for anticompetitive behavior here are identical to Bell Atlantic's. The CLEC, of course, is not subject to Computer III. But the Commission's

placing Computer III controls on Bell Atlantic — and its affiliate — will set a price ceiling that restrains the CLEC as well.

Moreover, even a CLEC that does not offer its own ISP services has good reason to keep its prices high for DSL. Its only disincentive is the possibility of being undersold by Bell Atlantic or the Bell Atlantic affiliate (or another CLEC). But consider the choices available to Bell Atlantic or its affiliate, in the presence of a CLEC. Bell Atlantic could lower DSL rates to compete with the CLEC, and possibly sell more basic transport. More likely, though, it will act as in Case 1, above, and set DSL rates much higher for the independent ISPs than for Bell Atlantic's own ISP. The CLEC in turn knows that Bell Atlantic would rather sell ISP service than basic transport, because it makes more money that way. Thus, the CLEC knows it too can safely charge independent ISPs artificially high rates for advanced services, without fear of real competition from Bell Atlantic or its affiliate.

In the long run, to be sure, the emergence of multiple CLECs will tend to bring rates down to competitive levels. But that will take considerable time, and will probably never happen outside the largest markets. In the meantime — and for the long run in most of the country — the only way to ensure a properly competitive market for ISP services is to require the Bell Atlantic affiliate, along with the parent company, to unbundle DSL and other advanced services and provide them to competing ISPs on nondiscriminatory terms.¹³ As a corollary, the affiliates must be required at least to comply with the ONA tariff provisions applicable to the parent,¹⁴ even if

¹³ The affiliate must also be subject to the same CPNI rules as the parent, if the Commission permits the sharing of CPNI between the two entities. *See* Section 706 Order & Notice at ¶ 113.

¹⁴ Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 3084, 3089 at ¶ 43 (1990) ("[W]e reiterate that any offering of BSEs, as defined in the *BOC ONA Order*, must

other tariff obligations are waived,¹⁵ to preserve the current level of information available to ISPs and to maintain "national uniformity in nomenclature, terms and conditions and rate structures for ONA services."¹⁶

In the same vein, Bell Atlantic cannot be permitted to evade Computer III by offering ISP services through the same affiliate that provides DSL. Bell Atlantic might try to argue that only the regulated company is subject to ONA unbundling and nondiscrimination requirements, and that an affiliate providing both DSL and ISP services need not offer DSL on a nondiscriminatory basis — or offer it at all — to independent ISPs. This argument would try to use the protections proposed in the Section 706 Order & Notice to undercut those guaranteed by Computer III. The ONA requirements for unbundling and nondiscriminatory provision must apply no matter how Bell Atlantic distributes DSL and ISP offerings among its corporate entities.

Bell Atlantic may object to the imposition of both structural separation, which is somewhat reminiscent of Computer II, and Computer III safeguards, which historically replaced Computer II structural separation. But this objection has no merit. Computer II structural separation, and that proposed in the Section 706 Order & Notice, serve very different purposes. Computer II protected competing providers of *information* services, a market now protected under Computer III. The structural separation proposed here will protect a different market: competing providers of *basic telecommunications* service. The growth and maintenance of

be made available in the interstate tariffs when such BSEs are technically compatible with interstate access arrangements.") (citation footnote omitted).

¹⁵ See Section 706 Order & Notice at ¶ 100.

¹⁶ Filing and Review of Open Network Architecture Plans, 5 FCC Rcd at 3084, 3089 at ¶ 44 (1990).

competition in both information and telecommunications services require the operation of both controls, at least for the present.

IV. REGARDLESS OF WHETHER DSL SERVICE IS JURISDICTIONALLY INTERSTATE OR INTRASTATE, ITS USE CANNOT SUBJECT ISPs TO ACCESS CHARGES.

Bell Atlantic appears to concede that ISPs are properly exempt from access charges as "end users."¹⁷ It then goes on to argue that this has no bearing on whether ISPs are also "end users" for purposes of determining jurisdiction.¹⁸ Bell Atlantic is correct that the ISP access exemption rests on grounds unrelated to the jurisdiction issue. As a result, the exemption cannot be affected by the outcome of this tariff dispute. GTE, however, hints in the pleadings of two parallel proceedings that a finding of interstate jurisdiction might subject ISPs to access charges.¹⁹ These hints are wrong.

The Commission's grounds for exempting ISPs from access charges — non-cost-based rates, inefficient rate structures, inappropriate regulatory model, lack of similarity to IXC's, and threat to growth of information services — have nothing to do with the issues in this proceeding. Last year the Commission reiterated in detail why it proposed to maintain the exemption:

We explained that the existing access charge system includes non-cost-based rates and inefficient rate structures. We stated that there is no reason to extend such a system to an additional class of customers, especially considering the potentially detrimental effects on the growth of the still-evolving information services industry. We explained that ISPs should not be subjected to an interstate regulatory system designed for circuit-switched interexchange voice telephony

¹⁷ Direct Case of Bell Atlantic at 9.

¹⁸ *Id.* at 9-10.

¹⁹ See Direct Case of GTE at 23-24 in CC Docket No. 98-79 (filed Sept. 8, 1998); Direct Case of GTE CC Docket No. 98-167, Exhibit A at 23-24 (filed . Sept. 25, 1998).

solely because ISPs use incumbent LEC networks to receive calls from their customers.²⁰

In resolving to maintaining the exemption, the Commission explained further:

[G]iven the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to IXC's. Commercial Internet access, for example, did not even exist when access charges were established. As commenters point out, many of the characteristics of ISP traffic (such as large numbers of incoming calls to Internet service providers) may be shared by other classes of business customers.²¹

All of these grounds remain fully in force, regardless of the outcome of this proceeding.

And the Commission's having used pre-DSL words like "circuit-switched interexchange voice telephony" and "public switched network" does not change that result. Read fairly, in context, these terms describe the current scheme of regulation, not any particular technology. Moreover, that regulatory system reflects operation in a circuit-switched environment. If the evolution from a circuit-switched local loop to DSL is a drastic enough change to call into question the ISP access charge exemption, then it is certainly drastic enough to undermine the fundamental assumptions on which access charges themselves are based.

Finally, Bell Atlantic seems to agree that Internet access is driving the market for DSL services. But it was the Commission's access charge exemption, in part, that fostered the growth

²⁰ Access Charge Reform, 12 FCC Rcd 15982, 16132-33 (1997), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, No. 97-2618, 1998 U.S. App. LEXIS 20479 (8th Cir. Aug. 19, 1998). Note that the Commission's opinion uses the abbreviation ISP to mean "information service provider," a category larger than "Internet service provider."

²¹ *Id.*, 12 FCC Rcd at 16133.

of the Internet,²² and hence led to the demand for DSL that Bell Atlantic now seeks to meet. It would be ironic indeed if the very success of the ISP exemption became the direct cause of its withdrawal.

CONCLUSION

The Commission should adopt a technology-neutral stance toward enhancements of the local loop, and so should regulate DSL just as it does the conventional analog local loop. Because DSL is a basic service under Computer III, Bell Atlantic must unbundle DSL and make it available to competing ISPs at nondiscriminatory rates, terms, and conditions. If the Commission ultimately adopts its proposal to permit the ILECs to meet their Section 251 obligations by providing DSL through a separate subsidiary, the Computer III requirements must apply nonetheless. Finally, even a finding of interstate jurisdiction in this proceeding cannot subject ISPs to access charges.

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October 15, 1998

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²² *Id.*, 12 FCC Rcd at 16133 ("We think it possible that had access rates applied to ISPs over the last 14 years, the pace of development of the Internet and other services may not have been so rapid.")

APPENDIX A

Internet Service Providers' Consortium Membership Roster, September 1998

Company	City	State	Country	FirstName	LastName
.NU Domain LTD	Sherborn	MA	USA	Bill	Semich
2 Cow Herd Internet Services	Venice	CA	USA	Deb	Howard
3Com Corporation / US Robotics	Mount Prospect	IL	USA	Katherine	Sawyer
AboveNet Communications	San Jose	CA	USA	Justin	Newton
ABSnet Internet Services, Inc.	Baltimore	MD	USA	Marc	Siegel
AcroNet Professional Internet Services Inc.	Kenosha	WI	USA	Chris	Pappe
Affordable Connections Internet Company	Pt. Charlotte	FL	USA	Tom	Weems
AlaNet Internet Services, Inc.	Dothan	AL	USA	Jennifer	Watts
Allegany.com Internet Services, Inc.	Warren	PA	USA	Oran	Stewart
Alpine Internet	Carson City	NV	USA	Richard	Hodges
Applied Personal Computing, Inc.	Fairview Heights	IL	USA	Kevin J.	Sawyer
Arisian Software	Jupiter	FL	USA	Mark	Velasquez
Astroarch Consulting, Inc.	Austin	TX	USA	Edward	Haletky
AT&T Networked Commerce Services	Bridgewater	NJ	USA	Pending	
Atlantech Online, Inc.	Silver Spring	MD	USA	Edward J.	Fineran
Atlas Communications	Springfield	MO	USA	Steve	Powell
Bay Networks	Parsippany	NJ	USA	Pending	
Berean Solutions, Inc.	Tupelo	MS	USA	Scott	Thomas
Berkeley Software Design, Inc.	Colorado Springs	CO	USA	Rob	Kolstad
Byte Size Computers	Berryville	AR	USA	Robert	Fowler
CacheFlow Inc.	Palo Alto	CA	USA	Tom	McCafferty
Call Sciences	Edison	NJ	USA	Robert N	Danskin
Canville Communications	West Chester	OH	USA	Dan C.	Rinnert
CapaNet Inc.	Natrona Heights	PA	USA	Tina Marie	CeLane
CapaNet, Inc.	Natrona Heights	PA	USA	Lee	Capa
Caprica	Monterey Park	CA	USA	Kenneth	Taira
Carolina Online Inc.	Anderson	SC	USA	Gary	Merck
carpeNet Information Technologies GmbH	Hofheim		Germany	Ray	Davis
ChooseYourMail.com	Chicago	IL	USA	Ian	Oxman

Christy Industries, Inc.	Fraser	MI	USA	Shayne	Judkins
Clarity Connect Inc.	Ithaca	NY	USA	Joseph	Lalley
ClearGate Communications, Inc.	Glastonbury	CT	USA	Gene	Tye
Colomotion, Inc.	San Francisco	CA	USA	Peter	Berns
CompuBasix	Corpus Christi	TX	USA	David	Routh
Connections Plus Internet Services	Sumter	SC	USA	Dan	Haughton
ConnectLink Inc	Chescpeake	OH	USA	Phil	Henson
CrimsonWeb Information Systems	La Crescenta	CA	USA	Jason	Ingham
Critical Path Inc.	San Francisco	CA	USA	Shelley	Alger
CSRlink, Inc. (Uplink)	Montoursville	PA	USA	Micah	Brown
CubeXS Private Limited	Karachi	Sind	Pakistan	Aly G.	Ramzan
Cumberland Internet, Inc.	Toledo	IL	USA	David	Glynn
Cyberix, Inc.	Warminster	PA	USA	Kyoungbu m	Park
Cyberport LLC	Clarmont	NH	USA	R. David	Murray
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Deepwell Internet Services	Fair Oaks	CA	USA	Ian	Briggs
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DFW Family Internet Services	Plano	TX	USA	William	Yiu
Didja Net Communications	Pontotoc	MS	USA	Ricky	Robbins
Digital Internet Access Link, Inc.	Springfield	MO	USA	Tim	Hite
Digital Starlight Communications, Inc.	Agoura Hills	CA	USA	Alan	DeRossett
Dimensional Comunications, LLC	Denver	CO	USA	David	Denney
Direct Network Access	Berkeley	CA	USA	Dror	Matalon
Dream Communications, Inc.	Cohasset	MA	USA	Aaron	Sawchuk
dsl.net, inc.	West Haven	CT	USA	John	Jaser
Dundee Internet Services, Inc.	Dundee	MI	USA	Patricia	Rountree
EarthReach Communications, LLC	Appleton	WI	USA	Jeff	Vogt
EAZNet	Safford	AZ	USA	Eddie	Fry
Electro Link Network, Inc.	Elburn	IL	USA	Dan	Graupman
Elite.net	Merced	CA	USA	Gilbert James	Arguelles
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Enterprise Information Services, Inc.	Washington	DC	USA	Hasan	Muhamma d
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Erols Internet	Springfield	VA	USA	Alec	Peterson
E-world Internet	Fullerton	CA	USA	Charles	Chang
EXP Internet Services	Bridge City	TX	USA	J. Glenn	Hughes
Fastransit Communications, Inc.	West Jefferson	NC	USA	Scott	Knapp
Flordia Digital Turnpike	Tallahassee	FL	USA	Harald W.	Kegelmann
Fort Nocs Inc.	Anchorage	AK	USA	Lance	Ahern

Frazier Mountain Internet Service	Pine Mountain CA	USA	Scott	Rosen
Club				
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G.R.I.N. Net	San Francisco CA	USA	Andrew	Robinson
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Globalnet	Philo OH	USA	Jeff	Ault
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	Robins			
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Hypernet Communications	Cleburne TX	USA	Douglas	Bowyer
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Infolink Servicios, S.C.	El Paso TX	USA	Jose A.	Gonzalez
InfoMine Of The Rockies, Inc.	Butte MT	USA	Phillip J.	Curtiss
InReach Internet, LLC	Stockton CA	USA	John	Keagy
Insync Internet Services, Inc.	Houston TX	USA	David	Power
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Program				
InterComm Technologies, Inc.	Otterbein IN	USA	Bill	Warner
Interconnected Associates	Seattle WA	USA	Jeffrey	Sterling
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ISPNews, Inc.	Plymouth MI	USA	Michael	Betts

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JASKE Internet Solutions	Chicago	IL	USA	Alexi	Touloumis
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Klondyke's Online Services	Richmond	MI	USA	Maria	Wells
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			e		
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Madison County Telephone	Huntsville	AR	USA	Jeremy	Webb
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Maui Net, Inc.	Kihei	HI	USA	Roger	Stout
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Midwest Web Inc.	Painesville	OH	USA	Mark	Canfield
Millennia Communications, LLC	San Diego	CA	USA	Rick	Stevens
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Net Access Corporation	Newton	NJ	USA	Alex	Rubenstein
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Net Crusader, Inc.	Manassas Park	VA	USA	J. Carlos	Castro
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Netaxs	Philadelphia	PA	USA	Avi	Freedman
NetCreations, Inc.	Brooklyn	NY	USA	Rosalind	Resnick

Netmeg Internet	Monroe	CT	USA	Matt	Magri
NetSpace, S.A. de C.V.	Toluca		Mexico	Oscar	Mondragon
Netstarz Solutions	Toomsboro	GA	USA	Harold G.	Powers
Netstep Access Services	Kingston	NY	USA	Robb	Kinnin
Netsurfer, Inc	Atlanta	GA	USA	J. Scott	Williford
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On-Line Systems	Palatine	IL	USA	Jay	Griffiths
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Palmer Divide Communications	Monument	CO	USA	Joseph M.	Beggs
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PAXnet Communications Inc.	Greenville	SC	USA	James J	Mundy
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Priori Networks		CA	USA	Timothy	Brown
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Rural Communications, Inc.	Cedar Hill	MO	USA	Christopher	Jones
Scescape, Inc.	Aiken	SC	USA	Joe	Bonin
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Sentient Networks, Inc.	Milpitas	CA	USA	Sunil	Dhar
ShreveNet, Inc.	Shreveport	LA	USA	Brian	Feeny
SkyCache, Inc.	Laurel	MD	USA	Doug	Humphrey
SLIP.NET	San Francisco	CA	USA	Ted	Glenwright
SoftAplic S/C Ltda	Belo Horizonte	MG	Brazil	Edesio	Costa e

Software Design Associates	Poway	CA	USA	Jeff	Silva
SONET Communications	Lawton	OK	USA	John	Lawhorn
Sonoma Systems	Marina del Rey	CA	USA	John	Gisclon
					Mazzaferro
Southern Star	Metairie	LA	USA	John R.	Souvestre
SouthNet Inc.	Hamilton	AL	USA	Tony	Williams
Southwest Cyberport	Albuquerque	NM	USA	Mark	Costlow
SoVerNet	Bellows Falls	VT	USA	Erik	Leo
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Stevens Enterprise	Beaumont	TX	USA	Kenneth M.	Stevens
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TDI Internet, Inc.	Monroe	MI	USA	Tom	Bilan
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The Foxberry Network Inc.	Monroe	MI	USA	Thomas	Fox
The UserFriendly Network	West Reading	PA	USA	Michael	Weiner
Thevoid.net	Studio City	CA	USA	Dean	Schinnerer
Tigerden Internet Services	Dayton	OH	USA	George	Nemeyer
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Union Net	Baltimore	MD	USA	M.C.	Motsko
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US Xchange, LLC	Grand Rapids	MI	USA	Scott	Brew
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Valhall Access	Welland	ON	Canada	Kitty Sue	Morgan
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Virginia Internet Express	Dayton	VA	USA	Fred R.	McDavid, Jr.
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WebbSite, Inc	Fayetteville	AR	USA	Jason	Webb

WebMasters, Inc.	Horsham	PA	USA	David	Weiner
Wizvax Communications	Troy	NY	USA	Richard	Shetron
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Xcom	Cambridge	MA	USA	John	Johnson
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Certificate of Service

I, Mitchell Lazarus, an attorney with the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 15th day of October, 1998, I caused copies of the foregoing "Comments Of The Internet Service Providers' Consortium" to be delivered by hand, or by facsimile as noted, to the following:

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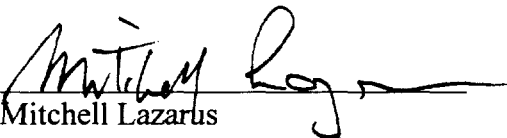
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